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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,208	04/22/2004	Todd A. Leonhardt	RHE-15250	9026

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EXAMINER

MAI, NGOCLAN THI

ART UNIT PAPER NUMBER

1742

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/830,208	LEONHARDT ET AL.	
	Examiner	Art Unit	
	Ngoclan T. Mai	1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-8, 16-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 16-19, 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/1/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's arguments, see pages 5-8, filed 12/14/05 and Declaration of Todd A. Leonhardt under 37 C.R.F 1.132 have been fully considered and are persuasive. Therefore, the all rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Cheney et al. (U.S. Patent No. 3,623,860).
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102/103

3. Claims 1-8 and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cheney et al.

Cheney et al. disclose tungsten rhenium alloy formed by forming an aqueous solution comprising water, a water soluble tungsten source and a water soluble rhenium source, spray drying the aqueous solution to form tungsten-rhenium alloy powder having the rhenium and tungsten sources relatively homogeneously distributed throughout each particle and heating treating the alloy powder under controlled atmospheric and temperature conditions for a time sufficient to convert the tungsten and rhenium sources to metallic tungsten and rhenium, col. 2, lines 6-18. The alloy powder produced can then be formed into product by conventional powder metallurgy technique, col. 2, lines 3-6. Note that by this the reference teaches compacting and sintering. Cheney et al. disclose the alloy can be formed by employing tungsten to rhenium ratio of greater than 95:5 and less than 5:95, col. 3, lines 31-36 and the patent claim 2. Note that tungsten in the second ratio is less than 5%.

Alternatively it would have been obvious to one of ordinary skill in the art to select any portion of range, including the claimed range, from the broader range disclosed in the reference because reference finds that tungsten rhenium ratio in the entire disclosed range has a suitable utility. --- Note: Even if a reference teaches a preferred range within a broader range, it still does not "teach away" from the claimed invention. See MPEP 2123.

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While Cheney et al do not teach the tensile strength at room temperature and an elongation of the alloy in the amount recited in claim 1, it appears that the claimed properties are material properties, consequently, the properties as recited in the instant claim would have inherently possessed by the teaching of the cited reference. Therefore, the burden is on the applicant to prove that the product of the prior art does not necessarily or inherently possesses characteristics attributed to the claimed product. In re Spade, 911 F.2d 705, 708, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990), In re Best, 195 USPQ 430 and MPEP § 2112.01. Although the alloy disclosed by Cheney et al is not formed by coating rhenium powder with liquid of tungsten compound before compacting and sintering, there is no evidence of any difference between the alloy of Cheney et al. and the alloy recited in claims 5 and 21. Thus the claimed alloy are not patentable distinction from that of the reference.

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheney et al. in view of Kubon et al (U.S. Patent No. 6,060,829).

The difference between the claims and Cheney et al. is that Cheney et al do not teach a wire formed of the tungsten rhenium alloy.


Kubon et al disclose wire formed of Re-W alloy which consists of Re and no more than 10% by weight of W, col. 3, lines 23-31. In view of Kubon teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the rhenium tungsten alloy taught by Cheney into wire if wire shape of the alloy is desired.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoclan T. Mai whose telephone number is (571) 272-1246. The examiner can normally be reached on 9:30-6:00 PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ngoclan T. Mai
Primary Examiner
Art Unit 1742

n.m.